



# University of Hawaii at Manoa

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November 7, 1983

RP:0033

Mr. Eugene Bromley  
Environmental Protection Agency  
Region 9  
Water Management Division (W-1)  
215 Fremont Street  
San Francisco, California 94105

Dear Mr. Bromley:

Draft General NPDES Permit No. H10111287  
Discharges from Vessels or Other Floating Craft  
into the Pacific Ocean

We appreciate your response to our request of October 3, 1983 for copies of the draft Permit and Fact Sheet for the above cited NPDES General Permit. Unfortunately, the material did not arrive in time for us to coordinate a review by your October 20, 1983 response deadline.

We have now reviewed the information provided and concur with the findings of no potential or direct significant impacts to the marine environment for the discharge of certain specific wastes from vessels or floating craft engaged in deep seabed mining exploration activities in the Pacific Ocean under the Deep Seabed Hard Mineral Resources Act.

Some general comments regarding the issuance of the proposed General NPDES permit seem in order.

Federal Regulations (40CFR 122; Revised 48 FR 14153, April 1, 1983, 122.3) specifically exclude certain discharges from the need for an NPDES permit: ***The following discharges do not require NPDES permits: (a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel.*** Examination of the nine types of discharge that would be permitted under the proposed General NPDES permit would indicate that they fall within the types of discharges specifically excluded by this paragraph. However, the exclusion does not apply to ***...other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, ...or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.*** Interpretation of the exploration activity as a ***mining facility*** does not seem valid as ***facility*** is further

defined (122.2) as **a point source for pollutant discharge** and under the definition of **pollutant** (122.2 (a)) **sewage from vessels** is expressly excluded. In reviewing the exploration procedures for deep ocean hard mineral resources we find no evidence that the exploration will require the mining vessel to be **secured to the bed of the ocean**, hence that provision would not appear to trigger the requirement for an NPDES permit.

Thus we conclude that the specifically proposed discharges from ocean mining exploration vessels, as described in the Notice of Draft General Permit, should not be subject to permit requirements under the NPDES regulations.

The Federal Register notice of the Draft General NPDES Permit (Vol. 48, No. 168/August 29, 1983) implies a linkage between the issuance of the NPDES general permit to requirements specified in the Deep Seabed Hard Mineral Resources Act (DSHMRA) (PL 96-283 Section 109(e)) applicable to commercial recovery or exploration vessels. **For the purposes of this Act DSHMRA, any vessel or other floating craft engaged in commercial recovery or exploration shall not be deemed to be "a vessel or other floating craft" under section 502(12)(B) of the Clean Water Act, and any discharge of a pollutant from such a vessel or other floating craft shall be subject to the Clean Water Act.**

The cited Section, 502(12)(B), provides the definition of **discharge of a pollutant**, and for the purposes of the Federal Water Pollution Control Act (Clean Water Act) defines such discharge as: **(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft** (emphasis added). Thus the exclusion of **a vessel or other floating craft** as provided in Section 502(12)(B) would not apply to such vessels or other floating craft under the DSHMRA. However, going back then to section 109(e) of the DSHMRA which would require **any discharge of a pollutant from such a vessel or other floating craft (to) be subject to the Clean Water Act** we find that according to the Clean Water Act (FWPC) 502(6)(A) **sewage from vessels** within the meaning of section 312 of this act is specifically excluded from the definition of **pollutant**.

Thus while the DSHMRA would require compliance with regulations affecting pollutant discharges from vessels or other floating craft otherwise exempt by the Clean Water Act, the specific exclusion of sewage wastes as a **pollutant** eliminates the **sewage** component of any such discharge from NPDES regulation. It would appear then, that at the least, sewage discharges from the exploration ships should be allowed without being subject to NPDES permit requirements. Specifically, it could be argued that discharges 002-Sanitary Wastes and 003-Domestic Wastes should not be included in the proposed general permit. Furthermore, given the modest volumes and relatively innocuous nature of the other discharges to be permitted under the General Permit and the exclusions originally provided by the Environmental Protection Agency (EPA) NPDES regulations with respect to excluding **discharges incidental to the normal operation of a vessel** (122.3) the rationale for requiring an NPDES permit for any of the nine proposed discharges does not seem valid or reasonable.

The discussion provided under the heading; Section C. The Marine Protection, Research and Sanctuaries Act; states that **there are presently no marine sanctuaries or active candidates for marine sanctuary designation in the affected Pacific Ocean region**. This is an error. While the proposed discharges outlined in the Draft General NPDES Permit would not

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affect it, we do call attention, for your future information, to the proposed Humpback Whale National Marine Sanctuary. The specific boundaries are not yet established but will include waters within the northwestern boundaries of this permit in the Hawaiian archipelago.

The need for pollutant control and the rationale which led to the passage of the Clean Water Act/Federal Water Pollution Control Act is universally recognized and certainly to be commended and its attendant regulations enforced. We have no environmentally based concerns or objections to the issuance of the proposed general NPDES permit. However, we question the legal authority or environmental necessity for the issuance of the general permit. The promulgation of controls (permits) beyond that intended by Congress, beyond what is legally required and without substantive environmental gain, is not only administratively costly, but by its illogical application promulgates general disrespect and public contempt for environmentally sound laws and regulations.

We appreciate the opportunity to provide our comments on this proposed General NPDES Permit and the inclusion of our name to your mailing list for future regulatory or informative materials relative to NPDES permits and deep seabed hard mineral resources and mining in the Pacific Ocean.

Yours truly,



Doak C. Cox  
Director

cc: Jacquelin Miller  
Pamela Bahnsen

bcc: Jack Huizingh